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formance or part performance so that the court may judge of their sufficiency.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 356-370, 372; Dec. Dig. § 114.* 12 Va.-W. Va. Enc. Dig. 532.]

Appeal from Circuit Court, Tazewell County.

Suit by Virginia A. Moss and another against W. F. Harman, who filed a cross-bill. From a decree for plaintiffs, defendant appeals. Amended and affirmed and remanded for further proceedings.

Henry & Graham & Hawthorne and *S. M. B. Coulling*, all of Tazewell, for appellant.

Henson & Bowen, of Tazewell, for appellees.

HUETTEL COAL & COKE CO. *v.* LAWRENCE'S ADM'R.

Sept. 9, 1915.

[86 S. E. 151.]

Master and Servant (§ 241*)—Injury to Coal Miner—Contributory Negligence.—A coal miner of experience, killed by the fall of slate from the roof of the place where he was working, was guilty of contributory negligence, barring recovery both at common law and under the mining act (Acts 1912, c. 178); the roof being in an obviously dangerous condition, so that not only could an ordinarily prudent man have seen the peril of remaining there, and he having ordered timbers, which he had not received, to make it safe, but he having also, within an hour of the accident, been repeatedly warned of the danger, and told that unless he came out he would be killed, and having disregarded the warnings.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 757; Dec. Dig. § 241.* 9 Va.-W. Va. Enc. Dig. 703.]

Error to Circuit Court, Wise County.

Action by Milton A. Lawrence's administrator against the Huettel Coal and Coke Company. Judgment for plaintiff, and defendant brings error. Reversed and rendered.

Bullitt & Chalkey, of Big Stone Gap, for plaintiff in error.

Wm. H. Werth, of Tazewell and *Bond & Bruce*, of Wise, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.